

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

UNITED STATES OF AMERICA)	
)	DOCKET NO. 5:24-cr-00006-KDB-SCR
v.)	
)	FACTUAL BASIS
KELLY LEE SETZER)	
)	
)	

NOW COMES the United States of America, by and through Dena J. King, United States Attorney for the Western District of North Carolina, and hereby files this Factual Basis in support of the guilty plea in this matter.

This Factual Basis is filed pursuant to Local Criminal Rule 11.2 and does not attempt to set forth all the facts known to the United States at this time. By their signatures below, the parties expressly agree that there is a factual basis for the guilty plea that the defendant will tender, and that the facts set forth in this Factual Basis are sufficient to establish all of the elements of the crimes. The parties agree not to object to or otherwise contradict the facts set forth in this Factual Basis.

Upon acceptance of the plea, the United States will submit to the Probation Office a "Statement of Relevant Conduct" pursuant to Local Criminal Rule 32.4. The defendant may submit (but is not required to submit) a response to the Government's "Statement of Relevant Conduct" within seven days of its submission. The parties understand and agree that this Factual Basis does not necessarily represent all conduct relevant to sentencing. The parties agree that they have the right to object to facts set forth in the presentence report that are not contained in this Factual Basis. Either party may present to the Court additional relevant facts that do not contradict facts set forth in this Factual Basis.

1. On November 3, 2023, the Hickory Police Department ("HPD") obtained a search warrant for Defendant's residence located in Hickory, North Carolina. The search revealed a red HP laptop on the floor next to Defendant's bed and an orange thumb drive on the nightstand next to his bed. Additionally, HPD located a silver HP laptop that was powered off in a container in a downstairs bedroom/office. These devices were manufactured, or contained parts that were manufactured, outside North Carolina.

2. The forensics revealed that Defendant used Minor Victim to produce videos of child pornography, as defined in Title 18, United States Code, Section 2256(8) ("Child Pornography"), on four dates. On or about June 24, 2021, July 9, 2021, July 12, 2023, and September 21, 2023, in Catawba County, within the Western District of North Carolina and elsewhere, the defendant, KELLY LEE SETZER, attempted to, and did, employ, use, persuade, induce, and entice a minor, that is, Minor Victim, to engage in sexually explicit conduct for the

purpose of producing any visual depiction of such conduct using materials that had been mailed, shipped, or transported in and affecting interstate and foreign commerce by any means, including by computer, all in violation of Title 18, United States Code, Section 2251(a) & (e).

3. The forensic analysis of these devices further revealed files of images and videos of Child Pornography recovered from the red HP laptop, the orange thumb drive, and the silver HP laptop. The forensics further showed that the Defendant was in possession of Child Pornography since on or about October 5, 2020, and continuing through on or about November 3, 2023, in Catawba County, within the Western District of North Carolina and elsewhere.

4. Accordingly, the defendant, KELLY LEE SETZER, did knowingly possess, and access with intent to view, any material that contained an image of Child Pornography that involved a prepubescent minor and a minor who had not attained 12 years of age, and that had been mailed, and shipped and transported using any means and facility of interstate and foreign commerce, and in and affecting interstate and foreign commerce by any means, including by computer, and that was produced using materials that have been mailed, and shipped and transported in and affecting interstate and foreign commerce by any means, including by computer, all in violation of Title 18, United States Code, Section 2252A(a)(5)(B) & (b)(2).

5. The forensics further showed that on or about September 24, 2023, in Catawba County, within the Western District of North Carolina and elsewhere, the defendant, KELLY LEE SETZER, knowingly transported and shipped, and attempted to transport and ship, any Child Pornography using any means and facility of interstate and foreign commerce, and in and affecting interstate and foreign commerce by any means, including by computer, all in violation of Title 18, United States Code, Section 2252A(a)(1) & (b)(1).

DENA J. KING
UNITED STATES ATTORNEY



Daniel Cervantes
ASSISTANT UNITED STATES ATTORNEY

Defendant's Counsel's Signature and Acknowledgment

I have read this Factual Basis and the Bill of Indictment in this case and have discussed them with the defendant. Based on those discussions, I am satisfied that the defendant understands the Factual Basis and the Bill of Indictment. I hereby certify that the defendant does not dispute this Factual Basis.



Steven George Slawinski, Attorney for Defendant

DATED: November 8, 2024